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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

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March 15, 2006

The Honorable Andrew Card  
Chief of Staff  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. Card:

On February 8, 2006, President Bush signed into law a version of the Deficit Reduction Omnibus Reconciliation Act of 2005 that was different in substance from the version that passed the U.S. House of Representatives. Legal scholars have advised me that the substantive differences between the versions — which involve \$2 billion in federal spending — mean that this bill did not meet the fundamental constitutional requirement that both Houses of Congress must pass any legislation signed into law by the President.

I am writing to learn what the President and his staff knew about this constitutional defect at the time the President signed the legislation.

Detailed background about the legislation and its constitutional defects are contained in a letter I sent last month to House Minority Leader Nancy Pelosi, which I have enclosed with this letter.<sup>1</sup> In summary, the House-passed version of the legislation required the Medicare program to lease “durable medical equipment,” such as wheelchairs, for seniors and other beneficiaries for up to 36 months, while the version of the legislation signed by the President limited the duration of these leases to just 13 months. As the Congressional Budget Office reported, this seemingly small change from 36 months to 13 months has a disproportionately large budgetary impact, cutting Medicare outlays by \$2 billion over the next five years.<sup>2</sup>

I understand that a call was made to the White House before the legislation was signed by the President advising the White House of the differences between the bills and seeking advice

<sup>1</sup> See Letter from Rep. Henry A. Waxman to Democratic Leader Nancy Pelosi (Feb. 14, 2006).

<sup>2</sup> See Letter from CBO Acting Director Donald Marron to Rep. John M. Spratt, Jr. (Feb. 13, 2006).

The Honorable Andrew Card  
March 15, 2006  
Page 2

about how to proceed. My understanding is that the call was made either by the Speaker of the House to the President or by the senior staff of the Speaker to the senior staff of the President.

I would like to know whether the information I have received is correct. If it is, the implications are serious.

The Presentment Clause of the U.S. Constitution states that before a bill can become law, it must be passed by both Houses of Congress.<sup>3</sup> When the President took the oath of office, he swore to "preserve, protect, and defend the Constitution of the United States," which includes the Presentment Clause. If the President signed the Reconciliation Act knowing its constitutional infirmity, he would in effect be placing himself above the Constitution.

I do not raise this issue lightly. Given the gravity of the matter and the unusual circumstances surrounding the Reconciliation Act, Congress and the public need a straightforward explanation of what the President and his staff knew on February 8, when the legislation was signed into law.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, flowing style.

Henry A. Waxman  
Ranking Minority Member

Enclosure

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<sup>3</sup> U.S. Constitution, Article I, § 7.